

# HOUSE BILL No. 1133

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-32-4; IC 31-37-12-3.

**Synopsis:** Counsel for children charged with delinquent acts. Provides that, unless or until a valid waiver of the right to counsel has been or is made, a court shall appoint counsel for a child charged with a delinquent act if certain circumstances apply. Establishes requirements for waiving the child's right to counsel. Allows a waiver of the child's right to counsel to be withdrawn at any time. (This bill codifies Rule 25 of the Indiana Rules on Criminal Procedure.)

**Effective:** July 1, 2015.

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January 8, 2015, read first time and referred to Committee on Judiciary.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1133

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A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 31-32-4-2 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) **Except as**  
3       **provided in section 2.5 of this chapter**, if:  
4               (1) a child alleged to be a delinquent child does not have an  
5               attorney who may represent the child without a conflict of  
6               interest; and  
7               (2) the child has not lawfully waived the child's right to counsel  
8               under IC 31-32-5 (or IC 31-6-7-3 before its repeal);  
9       the juvenile court shall appoint counsel for the child at the detention  
10      hearing or at the initial hearing, whichever occurs first, or at any earlier  
11      time.  
12      (b) The court may appoint counsel to represent any child in any  
13      other proceeding.  
14      SECTION 2. IC 31-32-4-2.5 IS ADDED TO THE INDIANA CODE  
15      AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2015]: Sec. 2.5. (a) Unless or until a valid waiver of the right to counsel has been or is made under subsection (b), a court shall appoint counsel for a child charged with a delinquent act:

(1) when there is a request to waive the child to a court having criminal jurisdiction;

(2) when a parent, guardian, or custodian of the child has an interest adverse to the child;

(3) before convening any hearing in which the court may find facts, or the child may admit facts, on the basis of which the court may impose:

(A) wardship of the child to the department of correction;

(B) placement of the child in a community based correctional facility for children;

(C) confinement or continued confinement of the child in a juvenile detention center following the earlier of:

(i) an initial hearing; or

(ii) a detention hearing;

(D) placement or continued placement of the child in a secure private facility following the earlier of:

(i) an initial hearing; or

(ii) a detention hearing;

(E) placement or continued placement of the child in a shelter care facility following the earlier of:

(i) an initial hearing; or

(ii) a detention hearing; or

(F) placement or continued placement of the child in any other nonrelative out of home placement following the earlier of:

(i) an initial hearing; or

(ii) a detention hearing; or

(4) when a child is taken into custody and detained pursuant to IC 31-37-4-1 or IC 31-37-4-2.

(b) Following the appointment of counsel under subsection (a), any waiver of the right to counsel appointed under subsection (a) must be made:

(1) in accordance with IC 31-32-5;

(2) in open court;

(3) on the record and confirmed in writing; and

(4) in the presence of the child's attorney.

(c) A waiver of a right to counsel under this section may be withdrawn at any stage of a proceeding, in which event the court shall appoint counsel for the child.



1       SECTION 3. IC 31-37-12-3 IS AMENDED TO READ AS  
2       FOLLOWS[EFFECTIVE JULY 1, 2015]: Sec. 3. (a) Before complying  
3       with the other requirements of this section, the juvenile court shall first  
4       determine whether counsel has been:  
5       (1) waived under IC 31-32-5 **and in accordance with**  
6       **IC 31-32-4-2.5, if applicable;** or  
7       (2) previously obtained.  
8       (b) If counsel has not been waived **as described in subsection**  
9       **(a)(1)** or previously obtained, the juvenile court shall appoint counsel  
10      under IC 31-32-4.

